

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

RICHARD PRIDGEN,)	
)	
Petitioner,)	
)	
v.)	1:21CV136
)	
SHANTICIA HAWKINS,)	
)	
Respondent.)	

ORDER

This matter is before this court for review of the Recommendation filed on November 22, 2021, by the Magistrate Judge in accordance with 28 U.S.C. § 636(b). (Doc. 9.) In the Recommendation, the Magistrate Judge recommends that Respondent's Motion to Dismiss, (Doc. 4), be granted, that the Petition, (Doc. 1), be denied, and that a judgment be entered dismissing this action, without issuance of a certificate of appealability. The Recommendation was served on the parties to this action on November 22, 2021. (Doc. 10.) Petitioner filed timely objections, (Doc. 11), to the Recommendation.

This court is required to "make a de novo determination of those portions of the [Magistrate Judge's] report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). This court "may accept, reject, or modify, in whole or in part, the findings or recommendations

made by the [M]agistrate [J]udge. . . . [O]r recommit the matter to the [M]agistrate [J]udge with instructions." Id.

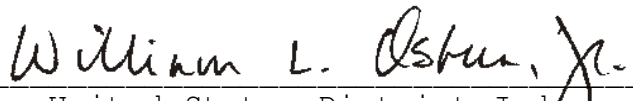
This court has appropriately reviewed the portions of the Recommendation to which the objections were made and has made a de novo determination which is in accord with the Magistrate Judge's Recommendation. This court therefore adopts the Recommendation.¹

IT IS THEREFORE ORDERED that the Magistrate Judge's Recommendation, (Doc. 9), is **ADOPTED. IT IS FURTHER ORDERED** that Respondent's motion to dismiss this action for being filed beyond the one-year limitation period, (Doc. 4), is **GRANTED**, that Petitioner's Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody, (Doc. 1), is **DENIED**, and that this action is **DISMISSED**. Finding no substantial issue for appeal concerning the denial of a constitutional right affecting the conviction, nor a debatable procedural ruling, a certificate of appealability is not issued.

¹ The Court notes that Petitioner's state court appeal of the denial of his Motion for Appropriate Relief is not equivalent to the granting of an out-of-time direct appeal on his underlying criminal conviction for purposes of Jimenez v. Quartermand, 555 U.S. 113 (2009). To the extent Petitioner raises new arguments now requesting equitable tolling, Petitioner was able to make his filings in the state court in 2019 and in this Court in 2021 while in state custody, and there is no basis to conclude that he could not have similarly done so three years earlier, and no basis to find that he exercised due diligence in the circumstances.

A Judgment dismissing this action will be entered contemporaneously with this Order.

This the 8th day of March, 2022.


United States District Judge